

COUNCIL ON DEVELOPMENT FINANCE

**October 6, 2008
PUBLIC HEARING 347**

THOSE PRESENT:

Mr. Andy Lubin, Chairperson
Steven L. Biener, Esquire
Senator Nancy Cook
Mr. Tom Gilligan
Mr. James Hutchison
Representative Greg Lavelle
Mrs. Richelle Vible

Mr. Gary Smith
Mrs. Sanskriti Inamdar
Mrs. Lee Porter
Mrs. Barb DeHaven
Ms. Patty Cannon
John S. McDaniel, Esquire
Ms. Christine Vennard

ALSO PRESENT: Representing **TA Instruments-Waters LLC** – Mr. W. Randolph Mercner, Vice President, Finance & Admin, Mr. Patrick Conway Director, HR and Mr. Terry Kelly, President; **ANP Technologies, Inc.** – Mr. Tom Bodnar, Chief Business Officer

LOCATION: Buena Vista, 661 South DuPont Highway, New Castle, Delaware

TIME: 9:00 A.M.

CALL TO ORDER

The meeting was called to order at 9:10 A.M. by Mr. Lubin, Chairperson, on Monday, October 6, 2008.

OLD BUSINESS:

Representative Lavelle made a motion that the minutes of the July 30, 2008 Council on Development Finance meeting be approved as presented. Mr. Hutchison seconded the motion, which was then adopted by unanimous vote.

Pair Technologies, LLC (“Pair” or the “Applicant”) – This application was presented at the August 25, 2008 Council meeting. However, there was not a quorum present and Mr. Lubin informed the Applicant that without a quorum, the Council could not take action on any project. The Council decided to hear the Applicant’s presentation and to review and take action at the next Council meeting.

The Applicant is requesting a matching grant from the Delaware Strategic Fund under the Delaware Technical Innovation Program in the amount of \$50,000. The Applicant, a

manufacturer of IR scientific and industrial analytical instruments, will utilize the grant to support continuity in the development of a prototype instrument, at its facility located in Newark, Delaware (the “Project”).

Mr. Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, that the Applicant is a “small business” within the meaning of 29 Del. C. §5035 (b)(3), that the Applicant has won a Phase I award in the Federal SBIR Program, that the Applicant has submitted a proposal for a Phase II SBIR award but has not yet received such award, that the Applicant’s principal place of business will be located in the State of Delaware; and that the research to be conducted will benefit the Delaware economy, and other requirements under applicable statutory and regulatory provisions, Mr. Biener made a motion that the Council recommend to Mrs. Judy Ann Cherry, Chairperson of The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Fifty Thousand Dollars (\$50,000) to be disbursed from the Delaware Technical Innovation Program (“DTIP”), to be used for the Project, contingent upon the approval remaining in effect through and including October 5, 2009. Mr. Lubin seconded the motion, which was then adopted by unanimous vote.

NEW BUSINESS:

TA Instruments – Waters LLC (“TA Instruments” or the “Applicant”) – The Applicant is requesting a grant in the amount of \$250,000 through the Delaware Strategic Fund and a grant in the amount of \$1,500,000 through the Delaware Competitiveness Fund. The proceeds will be used in the expansion of its current facility located at 109 Lukens Drive in New Castle, Delaware. This company is the world-wide market leader in the field of thermal analysis and rheology and provides thermal analysis, rheometry and microcalorimetry instruments throughout the world (the “Project”).

Mrs. DeHaven presented this request to the Council. Mr. Kelly stated that the company is currently adding manufacturing jobs. The Applicant’s top forty customers make up about 14 percent of its business. He stated the company will eventually eliminate most current products, because it is rolling out new product lines. He stated they are out of room in the space they are currently leasing. He stated TA Instruments needs to put more investments in research and development and into manufacturing. Mr. Kelly stated that the expansion efforts are on the fast track.

Mr. Lubin asked Mr. Kelly if they understood the disbursement process. Mr. Kelly stated that they understand that if they don’t hire people or spend the money, they don’t get the funding. He stated that even in the face of a tough economy, they are up in sales by 15 - 17 percent.

Mrs. DeHaven stated that DEDO wants to encourage this company and companies like this to grow. The Applicant is wholly owned but independently managed. There are currently 187 employees on site.

Mr. Biener asked about other sources of capital. Mr. Kelly stated that all sources are internal. He stated they are profitable and are looking to acquire more companies and products.

Representative Lavelle questioned Mr. Kelly's remark that the company plans to eliminate all products in the next five years. Mr. Kelly stated they will replace them with newly developed products. He stated a typical product cycle is 3-5 years.

Mr. Gilligan asked how quickly TA Instruments intended to start on the site. Mr. Kelly stated they hoped to start this week. They are going through the permitting process.

Mr. Lubin asked if there were any public comments; there were none.

After duly considering, *inter alia*, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to the maintaining or providing of gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$10,000, which funds, including the grant proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested grant funds; (iv) the Grant will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Mr. Biener made a motion that the Council recommend to Mrs. Judy Ann Cherry, Chairperson, The Delaware Economic Development Authority, approval of a grant in the amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) to be disbursed from the Delaware Strategic Fund, for the Project, contingent upon the approval remaining in effect through and including October 5, 2009. Mr. Hutchison seconded the motion, which was then unanimously approved.

After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will provide a matching grant to induce the Applicant to modernize its facility and preserve high-wage jobs, (ii) the Project will assist the Applicant in the transformation to updated processes that that will keep the facility in operation, (iii) the Project is feasible because

the Applicant has the necessary financial and management resources to execute the Competitiveness Fund Project, (vi) the Applicant is at a disadvantage to national competitors who can operate with newer, more efficient technology and international competitors who compete on price through reduced labor costs, (vii) the Applicant is a profitable and growing going concern that is financially capable to make the proposed capital investment, (viii) the Applicant is current on State business taxes, (ix) the Grant will effectuate the purposes of the Program and of subchapter IV of chapter 50 of title 29 of the Delaware Code (x) the Project will maintain or provide gainful employment for citizens of the State, (xi) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the citizens of the State, (xii) the Project will require a capital investment of at least Ten Thousand Dollars (\$10,000), which funds, including the Grant funds, will be available or already expended on the date of the first disbursement of the Grant, (xiii) the Applicant is not a chronic violator according to 7 Del. C., c. 7904, and (xiv) the Applicant is a financially responsible assisted person and has not been convicted of a major labor law violation or of illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the date of the Grant Agreement. Mr. Biener made a motion that the Council recommend to Mrs. Judy Ann Cherry, Chairperson, The Delaware Economic Development Authority, approval of a grant in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000) to be disbursed from the Delaware Competitiveness Fund for the Project, contingent upon the approval remaining in effect through and including October 5, 2009. Mr. Hutchison seconded the motion, which was then unanimously approved.

ANP Technologies, Inc. (“ANP” or the “Applicant”) - The Applicant is requesting a matching grant from the Delaware Strategic Fund under the Delaware Technical Innovation Program in the amount of \$50,000. The Applicant would use the proceeds to transition into Phase 2 of its Automated Biological Sample Concentration and Detection System in cooperation with the U.S. Department of Army at Aberdeen Proving Ground. The project is located at 824 Interchange Boulevard in Newark, Delaware (the “Project”).

Ms. Cannon presented this request to the Council. Ms. Cannon stated that the Delaware BioScience Association presented awards for the first time this year and ANP received an award. She stated ANP is a very good corporate citizen.

Mr. Bodnar stated that the current research proposes to integrate a commercially available air sample concentrator with their automated detection instrument. This can enhance sensitivity by 400%. He stated that this process had added significant business to ANP’s industry.

Mr. Bodnar stated that this request is for another bridge grant. ANP has been working with the Army and the University of Delaware – working hand in hand with University professors. He stated this started as detection and now they are getting into cardiac markers.

Mr. Bodnar stated that it is becoming increasingly difficult to retain employees. He stated ANP experiences attrition in its workforce due to larger employers' hiring of ANP employees. He stated they try to put measures in place and are trying to offer incentives to stay but at the end of the day if one employee wants to leave, they leave, but we still won't try to steal employees from other companies. He stated they attract some graduates but they are primarily undergraduates.

Mr. Gilligan asked about the outside investor. Mr. Bodnar stated that had to do with software.

Mr. Lubin asked Mr. Bodnar where ANP was in terms of the other four SBIR approvals. Mr. Bodnar stated that two of the SBIR projects were completed. They are finalizing the third one which is the "ace" project. Therefore, this one today would be the last one.

Mr. Bodnar stated that ANP is looking to expand operations so they are looking at specific buildings at this point and time. They hope to meet with Director Cherry to see what may be available.

Mr. Lubin asked if there were any public comments; there were none.

After duly considering, inter alia, the nature of the business, that the Applicant is a "small business" within the meaning of 29 Del. C. §5035 (b)(3), that the Applicant has won a Phase I award in the Federal SBIR Program, that the Applicant has submitted a proposal for a Phase II SBIR award but has not yet received such award, that the Applicant's principal place of business will be located in the State of Delaware; and that the research to be conducted will benefit the Delaware economy, and other requirements under applicable statutory and regulatory provisions, Mr. Hutchison made a motion that the Council recommend to Mrs. Judy Ann Cherry, Chairperson of The Delaware Economic Development Authority, approval of a grant in an amount not to exceed Fifty Thousand Dollars (\$50,000) to be disbursed from the Delaware Technical Innovation Program ("DTIP"), to be used for the Project, contingent upon the approval remaining in effect through and including October 5, 2009. Mr. Gilligan seconded the motion, which was then adopted by unanimous vote.

Navatek, LLC ("Navatek" or the "Applicant") - The Applicant is requesting an equity investment in the amount of \$500,000 from the Emerging Technologies Pre-Venture Fund ("Pre-Venture Fund"). The Applicant, which is a provider of enterprise compliance and security solutions designed to specifically assist organizations to ensure the security, integrity and privacy of their messaging and electronic document resources, proposes to use the proceeds to support marketing and sales efforts at its facility located at 280 E. Main Street in Newark, Delaware (the "Project").

Mr. Smith stated that Nayatek has presented its application to the Emerging Technologies Pre-Venture Fund Board (the "Board") and it was approved for Due Diligence. He stated that since the due diligence was done, Nayatek has received a term sheet from Originate, a venture capital company based out of Pennsylvania. Mr. Smith stated that DEDO is looking at employment creation. DEDO is working with Originate in an effort to meet both the State's goals and Originate's goals. Mr. Smith stated that he believes this is a company that is going to grow. He stated that Mark Olson has grown other companies well. He stated that Nayatek will keep its corporate headquarters in Delaware and will do some limited development within the State.

Mr. Smith stated that the Board wanted to move quickly on this Project. He stated that once DEDO obtains the term sheet, it is expected that the deal can close within a week.

Mr. Smith reiterated that Nayatek is getting ready for its software development which will be rolling out very shortly. Nayatek is a Delaware LLC and this Project has been approved by the Board for Due Diligence and the Due Diligence was favorably accepted. Mr. Biener asked if it was DEDO's expectation that it would get matching terms. Mr. Smith replied that was DEDO's expectation.

Mr. Gilligan stated that the information stated that the exit strategy expectation is in 2010 or 2011. Mr. Biener stated that according to the information submitted, commercialization will basically start in late October or early November.

Mrs. Inamdar stated that generally the Applicant has milestones but in this case, DEDO is tagging along. She stated it is DEDO's expectation that DEDO will be using the same type of ratios and milestones.

Mr. Lubin asked if Nayatek was going to get a patent after the products go on the market. Mr. Smith stated that was one of DEDO's questions. But the feeling was that because it was software, at the end of the day, a patent doesn't give you a lot of protection. The importance is not that patent is going to protect you but that you need protection from someone who is going to be able to crack the code. The emphasis should be on how strong the code has been scrambled so it can't be put back together. Mr. Smith stated that Kathy Geiger, Esquire, DEDO's patent attorney, felt that the patent was not an issue in this Project because of it being a software patent.

Mr. Smith stated that Mr. Colson has put in \$3 million of his own funds. Mrs. Vible stated that her impression was that the way Nayatek is selling this, is that it is a subscription, and her assumption is that this is not stagnant product but one that will need to be continuously updated. Mr. Smith stated that you would download the software, and within that software, there would be a 15 day trial version and you would either pay for it at that point and time or you would pay an annual maintenance fee.

Mr. Smith stated that if this deal is successful, this will be the first Pre-Venture Fund deal to go to closing. He stated there is still a lot of heavy lifting to do. Senator Cook asked if the Council should consider a contingency. Mr. Smith stated that the Board must approve the term sheet and that would be a contingency.

Mr. Lubin asked if there were any public comments; there were none.

After duly considering, the nature of the business and finding that the Project will (i) serve a public purpose by being a knowledge-based, fast-growing small business in a technology field such as biotechnology, (ii) that the Grant will effectuate the purposes of 76 *Del. Laws*, c. 79, §46(d) (July 1, 2007) and (iii) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Mr. Biener made a motion that the Council recommend to Mrs. Judy Ann Cherry, Chairperson, The Delaware Economic Development Authority, approval of an equity investment in the amount not to exceed Five Hundred Thousand Dollars (\$500,000) to be disbursed from the Emerging Technologies Pre-Venture Fund, for the Project, contingent upon the conditions of the investment being *pari passu* with the investment terms of Originate, upon approval of a term sheet by the Board and upon the approval remaining in effect through and including October 5, 2009. Mr. Gilligan seconded the motion, which was then unanimously approved.

Maverick Network Solutions ("Maverick" or the "Applicant") – The Applicant is requesting an equity investment in the amount \$500,000 from the Emerging Technologies Pre-Venture Fund. The Applicant, which is a provider of Advanced Payment Cards to a variety of business to business (B2B) markets with a particular focus on high potential emerging product categories that require custom designed solutions including prepaid cards for corporations and debit cards for retailers proposes to use the proceeds to support marketing and sales efforts at its facility located at 216 Martin Luther King Jr. Boulevard in Wilmington, Delaware (the "Project").

Mr. Smith passed out the term sheet for the Project, which detailed a class of cumulative convertible preferred stock. He stated DEDO expects to close this Project in late October, or early November of this year. Going into the deal, DEDO knew that there was already a term sheet from other investors, the decision was made that both of the funding sources would do a prominent amount of due diligence. The Board asked DEDO to focus on one area - specifically the saturation of the market and how and what the other corporate businesses in the financial industry feel about the success of what Maverick is presenting. He stated that basically, the way Maverick's product work is that it is a debit card that would be developed for going back to the way old credit cards used to be such as having individual cards for individual stores. He stated that Maverick has developed its own data base and because Maverick is a new startup, it was able to develop a

database from the ground up. Maverick was also able to do it for a substantially lower cost than banks. Mr. Smith stated that Maverick is proposing that fees charged to the acceptor would be substantially lower.

Mrs. Vible wanted to know more about the concept. Mr. Smith stated an example of how Maverick would have a contract with Race Track (a convenience store/gas station) for "x" number of customers and what would happen is that the Race Track would give their employees the debit card as an incentive. It would work like a debit card. The contract would generate a fee income.

Mr. Lubin asked why anyone would want another debit card. Mrs. Inamdar stated these cards would be used as an incentive such as the company may put a certain amount on the card for the employee to use such as a prepaid card. Mr. Lubin said that he questioned why a consumer would want to carry another card if it was no savings to them. Mr. Smith stated that Maverick said that there are advantages.

Mr. Lubin stated that he believes it is the Council's role to give DEDO flexibility that if the Board is satisfied with the terms and conditions of the proposed letter of intent, DEDO would make a \$500,000 investment in the preferred stock. Mrs. Inamdar stated that the Board has not made a decision yet. DEDO has done part of its due diligence requested by the Board. Senator Cook asked about the timing issue. Mrs. Inamdar stated that the Board meeting was on October and anticipates the closing to be October 17th. She stated DEDO would match but not exceed \$500,000 which would be following the Board's recommendation.

Representative Lavelle stated that the principals involved have a tremendous amount of experience in the credit card business which made him feel more comfortable.

Mr. Lubin asked if there were any public comments; there were none.

After duly considering, the nature of the business and finding that the Project will (i) serve a public purpose by being a knowledge-based, fast-growing small business in a technology field such as biotechnology, (ii) that the Grant will effectuate the purposes of 76 *Del. Laws*, c. 79, §46(d) (July 1, 2007) and (iii) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, Representative Lavelle made a motion that the Council recommend to Mrs. Judy Ann Cherry, Chairperson, The Delaware Economic Development Authority, approval of an equity investment in the amount not to exceed Five Hundred Thousand Dollars (\$500,000) to be disbursed from the Emerging Technologies Pre-Venture Fund, for the Project, contingent upon the conditions of the investment be *pari passu* with the investment terms of Originate, upon approval of a term sheet by the Board and upon the

approval remaining in effect through and including October 5, 2009. Mr. Gilligan seconded the motion, which was then unanimously approved.

Mr. Lubin asked that the Council be kept informed of the progress on this Project.

Emerging Technologies Pre-Venture Board (the “Board”) - Mr. Smith stated that Dr. Minter was no longer a member of the Board. He passed out the resume of Bernadette M. Ruf who has been suggested as a replacement. Ms. Ruf is associated with Delaware State University, as was Dr. Minter.

After considering the resume of Bernadette M. Ruf, Senator Cook made a motion that the Council recommend to the Board, to place Bernadette M. Ruf on the Board. Mr. Hutchison seconded the motion, which was then unanimously approved.

Mr. Smith informed the Council that the Board would like to reduce the required quorum of five members to four members. To accomplish this, there would have to be a change put in the next Bond Bill, because the quorum is now fixed by statute at five members physically present. This will be addressed at that time.

The meeting ended at 10:35 a.m.

Respectfully submitted,

Lee Porter, Secretary

LKP

cc: Members of the Council on Development Finance
Director Judy Ann Cherry
Elio Battista, Jr., Esquire

The next CDF meeting is scheduled for ***Monday, November 24, 2008*** at 9:00 A.M. at DEDO's Dover office.